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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

NOV -5 2008

MIKE GLEASON, Chairman
 WILLIAM A. MUNDELL
 JEFF HATCH-MILLER
 KRISTIN K. MAYES
 GARY PIERCE

DOCKETED BY

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In the matter of:

GERALD EDWIN PATCHEN II and JANE
 DOE PATCHEN, husband and wife,

Respondents.

DOCKET NO. S-20638A-08-0566

**TEMPORARY ORDER TO CEASE AND
 DESIST AND NOTICE OF
 OPPORTUNITY FOR HEARING**

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING****EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondent GERALD EDWIN PATCHEN II is engaging in or is about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

I. JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II. RESPONDENTS

2. Respondent GERALD EDWIN PATCHEN II ("PATCHEN") has, at all times material hereto, been a resident of Arizona.

3. JANE DOE PATCHEN has been at all relevant times the spouse of PATCHEN and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

1 4. At all times relevant, PATCHEN was acting for his own benefit and for the benefit
2 or in furtherance of his and Respondent Spouse's marital community.

3 **III. FACTS**

4 5. PATCHEN has been and is directly offering and selling securities from Arizona in
5 the form of promissory notes since at least July 12, 2006 in an amount not less than \$41,000.

6 6. At all times material hereto, PATCHEN has not been registered as a dealer.

7 7. PATCHEN has been and continues to solicit potential Arizona investors through
8 advertisements placed on an internet website known as Craig's List/Phoenix ("Craig's List").

9 8. One such advertisement posted by PATCHEN on Craig's List on October 19, 2008
10 stated:

11 Tired of the Stock Market? Tired of making 2-3% on
12 your savings account money? I am looking for investors to
 fund smaller deals that are very safe and pay very well.
 Are you interested?

13 9. After seeing the advertisement, at least one potential Arizona investor ("PAI")
14 responded to the advertisement and spoke to PATCHEN who identified himself as a mortgage
15 broker.

16 10. According to the Arizona Department of Financial Institutions, the agency
17 responsible for licensing mortgage brokers, PATCHEN is not licensed in Arizona as a mortgage
18 broker.

19 11. PATCHEN explained to the PAI that the investment opportunity involved providing
20 PATCHEN's mortgage clients with the funds necessary to enable the clients to qualify for a home
21 mortgage and/or to cover the closing costs associated with the purchase of a home.

22 12. According to PATCHEN, in exchange for their investment, investors received a
23 promissory note executed by PATCHEN.

24 13. During a meeting with the PAI, PATCHEN provided the PAI with a blank
25 promissory note titled as a "Straight Note." PATCHEN indicated he used the note in transactions
26

1 involving investors. The promissory note sets forth that any amounts loaned will be secured by a
2 deed of trust and assignment of rents on real property.

3 14. PATCHEN further explained to the PAI that once PATCHEN received his
4 commission from the home sale closing, he would repay the PAI the amount set forth in the
5 promissory note that included the principal investment amount, plus a return of not less than 25%
6 of the principal amount invested.

7 15. PATCHEN further explained to the PAI that PATCHEN, after repaying the investor
8 funds from PATCHEN's commissions, would then collect the funds from the client to whom the
9 funds had been lent in connection with the purchase of a home.

10 16. PATCHEN offered the PAI various returns including payment of \$4,000 on an
11 initial investment of \$3,000; payment of \$7,000 on an initial investment of \$5,000; and payment of
12 \$5,000 on an initial investment of \$3,500. According to PATCHEN, the time period for the
13 repayment to be made by him of the principal amount and promised return in each instance was
14 less than thirty days.

15 17. PATCHEN failed to disclose that, according to documents filed in Maricopa County
16 Superior Court, at least three investors have been awarded judgments against PATCHEN for his
17 failure to repay amounts due under the terms of promissory notes. The underlying promissory
18 notes upon which the judgments were based, were signed by PATCHEN and contained terms and
19 conditions nearly identical in nature to those included in the "Straight Note" provided by
20 PATCHEN to the PAI.

21 18. PATCHEN failed to disclose to the PAI that on April 28, 2004, PATCHEN had
22 voluntarily filed bankruptcy under Chapter 7 of the United States Bankruptcy Code in the United
23 States Bankruptcy Court, Eastern District of California in the matter entitled *In re Gerald Edwin*
24 *Patchen, II*, case no. 04-24386. On May 17, 2005, PATCHEN received a bankruptcy discharge.

25 19. PATCHEN failed to secure the promissory notes with a deed of trust and
26 assignment of rents on real property pursuant to the terms set forth in the promissory notes.

IV. VIOLATION OF A.R.S. § 44-1841

(Offer and Sale of Unregistered Securities)

20. From at least July 12, 2006, PATCHEN has been offering or selling securities in the form of promissory notes, within or from Arizona.

21. The securities referred to above are not registered pursuant to Articles 6 or 7 of the Securities Act.

22. This conduct violates A.R.S. § 44-1841.

V. VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

23. PATCHEN is offering or selling securities within or from Arizona while not registered as a dealer pursuant to Article 9 of the Securities Act.

24. This conduct violates A.R.S. § 44-1842.

VI. VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

25. In connection with the offer or sale of securities within or from Arizona, PATCHEN is directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. PATCHEN's conduct includes, but is not limited to, the following:

a) Misrepresenting to the PAI that he was a mortgage broker;

b) Failing to disclose to the PAI that he had voluntarily filed bankruptcy on April 28, 2004 under Chapter 7 of the United States Bankruptcy Code in the United States

1 Bankruptcy Court, Eastern District of California in the matter entitled *In re Gerald Edwin*
2 *Patchen, II*, case no. 04-24386 and that he was granted a bankruptcy discharge on May 17, 2005;

3 c) Failing to disclose to the PAI that at least three investors had been awarded
4 judgments against him for his failure to repay amounts due under the terms of promissory notes
5 executed by him.

6 26. This conduct violates A.R.S. § 44-1991.

7 **VII. TEMPORARY ORDER**

8 **Cease and Desist from Violating the Securities Act**

9 THEREFORE, based on the above allegations, and because the Commission has determined
10 that the public welfare requires immediate action,

11 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
12 Respondent, Respondent's agents, servants, employees, successors, assigns, and those persons in
13 active concert or participation with Respondent CEASE AND DESIST from any violations of the
14 Securities Act.

15 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
16 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

17 IT IS FURTHER ORDERED that this Order shall be effective immediately.

18 **VIII. REQUESTED RELIEF**

19 The Division requests that the Commission grant the following relief:

20 1. Order PATCHEN to permanently cease and desist from violating the Securities Act,
21 pursuant to A.R.S. § 44-2032;

22 2. Order PATCHEN to take affirmative action to correct the conditions resulting from
23 Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to
24 A.R.S. § 44-2032;

25 3. Order PATCHEN to pay the state of Arizona administrative penalties of up to five
26 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of PATCHEN and Respondent Spouse is subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

IX. HEARING OPPORTUNITY

Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-307. **If Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Temporary Order and Notice.** A request for hearing must be in writing and received by the Commission within 20 days after service of this Temporary Order and Notice. The requesting respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary Order shall remain effective from the date a hearing is requested until a decision is entered.** After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order, with written findings of fact and conclusions of law. A permanent Order may include ordering restitution, assessing administrative penalties, or other action.

If a request for hearing is not timely made, the Division will request that the Commission make permanent this Temporary Order, with written findings of fact and conclusions of law, which may include ordering restitution, assessing administrative penalties, or other relief.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,

ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

X. ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Temporary Order and Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to William W. Black.

The Answer shall contain an admission or denial of each allegation in this Temporary Order and Notice and the original signature of the answering respondent or the respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 5 day of
November, 2008.


Matthew J. Neubert
Director of Securities